



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1995

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701

OR95-1579

Dear Mr. Monroe:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28896.

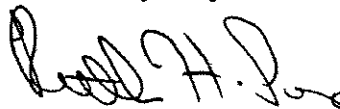
The Texas Department of Transportation (the "department") received a request for information pertaining to a site on Interstate 40, west of Shamrock in Wheeler County and the construction that apparently was ongoing at that site during May, 1992. The department has submitted to this office for review documents that you contend are "arguably responsive" to the request. You contend that these documents are excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

To show that litigation is reasonably anticipated, you have provided a copy of a notice of claim concerning an accident that occurred at or near the site of construction on Interstate 40. A lawyer for one of the individuals injured in that accident submitted a "notice of injury and claim for damages under the Texas Tort Claims Act" to the department in 1992. The accident for which notice was provided took place May 29, 1992. You have informed this office that suit has not been filed against the department in connection with that accident.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. Based on the information provided to this office, you have not shown that litigation is reasonably anticipated. The claim filed with the department was for personal injuries allegedly arising under title 5, chapter 101 of the Civil Practices and Remedies Code, commonly known as the Texas Tort Claims Act (the "act"). See Act of May 26, 1995, 74th Leg., R.S., ch. 827, § 1, 1995 Tex. Sess. Law Serv. 4210 (to be codified at Civ. Prac. & Rem. Code § 101.001(2)) ("Governmental unit" defined); Civ. Prac. & Rem. Code § 101.021 (providing for governmental liability under certain circumstances). However, a suit for personal injuries must be brought under the act within two years of the date the cause of action arose. See Act of May 27, 1995, 74th Leg., R.S., ch. 739, § 2, 1995 Tex. Sess. Law Serv. 3850 (to be codified at Civ. Prac. & Rem. Code § 16.003) (general two-year statute of limitations for personal injuries); Civ. Prac. & Rem. Code § 101.006 (act does not affect defenses, immunities, and jurisdictional bars otherwise available). Suits that are brought under the act outside of the applicable statutory period can be dismissed. *Dalon v. City of DeSoto*, 852 S.W.2d 530 (Tex. App.--Dallas, 1992, no writ); *Bishop v. Texas*, 577 S.W.2d 377 (Tex. Civ. App.--El Paso 1979, no writ). Since the accident that was the basis of the claim occurred more than two years ago without a lawsuit being filed, litigation does not appear to be reasonably anticipated at this time.

Because you have not shown the applicability of section 552.103(a) to the documents at issue, they must be provided to the requestor. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/LRD/rho

Ref.: ID# 28896

Enclosures: Submitted documents

cc: Mr. J.R. Lawrence
P.O. Box 81
Skellytown, Texas 79080
(w/o enclosures)